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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 764

L. I. COMBS & SONS, INC., L. I. COMBS, JR. AND VILLAGE SHOPPING CENTER, INC., AN INDIANA CORPORATION,

Petitioners.

vs.

PAUL M. SCHREIBMAN,

Respondent.

PETITIONERS' REPLY TO RESPONDENT'S ANSWER.

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Counsel for Petitioners.

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Gary, Indiana.

THE SUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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In answer to Respondent's contention that under Rule No. 19 of the Supreme Court, the Petitioners have not shown that the Court of Appeals has "decided an important State question in a way in conflict with applicable State law," we disagree.

The entire Indiana Real Estate Licensing Act must be examined. It is clear that under the aforesaid Act, there can be many different types of violations. It is also clear that under the aforementioned Act, the Respondent should have first procured a license. This was not done until August 10, 1959. The contract upon which this Respondent bases his lawsuit was entered into on July 8, 1959.

Under the aforesaid Act, the Real Estate Broker's License had to be kept in force at all times.

The Indiana Real Estate Licensing Act also provides in Section 19 (Indiana Burns Statutes, Sec. 63-2419) that a non-resident *may at the discretion of said Commission become entitled to conduct business of a Real Estate Broker in this State;*

and

by having the non-resident broker file a certified copy of the license issued to him in any other State;

and

plus payment of license fees;

and

plus filing of any consent by the non-resident broker that actions or suits-at-law may be commenced against him in any County of the State wherein any cause of action may arise or be claimed to have arisen out of any transaction occurring in such County or because of any transaction commenced or conducted by such non-resident broker;

and

further provides service of summons on the non-resident broker or his agent for conducting any such transaction in any County.

This Section 19 of the Indiana Real Estate Licensing Act obviously is contrary to Respondent's contention that he was entitled to a reciprocal license merely by requesting an application for a license.

The Indiana Real Estate Licensing Act specifically says in Section 7 (Indiana Burns Statutes 63-2407) that a broker must *first* procure a license and keep it *unrevoked*. This obviously shows the intent of the Legislature and as shown by the cases that a broker, under the Act, must have a license in effect at all times during the carrying on of the transaction.

The cases heretofore referred to in Indiana, namely: *McKenna* v. *Turpin* (Ind. App. 1958), 15 N. E. (2) 303, 306, 307, 128 Ind. App. 636, and *Folsom* v. *Callen* (1956), 126 Ind. App. 201, 131 N. E. (2) 328, have already interpreted the Indiana Real Estate Licensing Act regardless of whether the Court of Appeals for the Seventh Circuit admits that such interpretation was made. The Court of Appeals definitely ignores the full intent and scope of the Indiana Licensing Act, and has attempted to decide this case on a narrow interpretation of one clause in one section of the Act. The Court of Appeals has ignored the Indiana decisions referred to, and also ignored the Indiana Real Estate Licensing Act, which clearly indicates the intent of the Legislature when it passed the Act, and further the Court of Appeals has ignored the strict and stringent scope of this Act.

It is clear under the Indiana Real Estate Licensing Act and the decisions of the State of Indiana clearly show that any transactions illegally entered into were void, and any commissions were uncollectible by any broker who failed to strictly comply with the Indiana Real Estate Licensing Act.

This contention is supported by the decisions in *Hunter* v. *Cunning* (Ore. 1944), 154 Pac. (2) 562, 574, 176 Ore. 250 (Ore. 1945), 157 Pac. (2) 510, 512, 176 Ore. 250; and *Irons Investment Co.* v. *Richardson* (Sup. Ct. 1935 Washington), 50 Pac. (2) 42, 45, where the States of Oregon and Washington have similarly worded statutes to those of Indiana, and as to which decisions the District Court said that he arrived at the same result under the same or similar phraseology.

The District Court, we believe correctly interpreted the statute as meaning that the Act did not exempt an unlicensed broker from the ordinary consequences of performing illegal acts.

The Court of Appeals has taken the liberty to ignore the intent of the Legislature and interpretation of the Act as interpreted by the Indiana decisions. If the Act intends what it says and if the Indiana decisions are correct in interpreting the Indiana Act, then obviously the District Court was correct and the Court of Appeals was wrong.

The Court of Appeals held that the fact that Respondent was not licensed on July 8, 1959 when the Listing Contract was entered into does not, itself, render the contract void, and does not preclude recovery. This holding was in spite of the wording of the Indiana Licensing Act and in spite of the Indiana decisions which held that contracts made in violation of the statute are void.

The Court of Appeals reversed and remanded for further proceedings the District Court's decision, which reversal and remanding were unnecessary if the Indiana decisions are followed, that contracts made in violation of a statute are void. This was obviously so in this case.

Conclusion.

Petitioners reaffirm that under Rule No. 19 also, the Seventh Circuit Court of Appeals has decided an important State question in a way in conflict with applicable State law.

WHEREFORE, Petitioners respectfully pray that the Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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